

officer to ride into Manila in an Army jeep dispatched on official business so that she could purchase the aforesaid cotton clothing. On the way down town the operator of the jeep, a civilian employee of the Army, disregarded a stop sign at a street intersection, as a result of which the jeep collided with an Army weapons carrier. Miss Dwyer was thrown head first out of the jeep over the left shoulder of the driver and into the side of the weapons carrier, sustaining serious personal injuries. She was taken to a private hospital for first-aid treatment and then transferred to an Army hospital where she remained a bed patient for 19 days. Thereafter she was instructed to return for heat treatments and observation, which instructions were followed by her.

On January 20, 1947, the command to which Miss Dwyer was attached was transferred to Fuchu, Japan, and she was assigned as secretary to the Adjutant General who, it appears, was familiar with Miss Dwyer's injuries and told her that he could use her services in several capacities until such time as she had fully recovered from her injuries. After her arrival in Japan she was billeted in an inadequately heated concrete building, as a result of which she contracted a severe cold. She reported to the dispensary and it was recommended that she take daily diathermy treatments at a station hospital located 11 miles from her quarters. To do this, however, it was necessary for her to ride the 11 miles each morning to the hospital in an unheated ambulance and then return in the same unheated vehicle to her insufficiently heated office. After an unsuccessful attempt to obtain a transfer to Okinawa and since her physical condition did not improve, Miss Dwyer was returned to the United States where she reported to the civilian personnel office at Fort Mason, Calif. Thereafter she was sent to the Letterman General Hospital in San Francisco where she was treated for 10 days as an out-patient. On June 22, 1947, at the expiration of her accumulated leave, her services were terminated.

Miss Dwyer returned to her home in Nevada and thereafter underwent extensive hospitalization and medical treatment which was ascribed by her private physicians to the injuries she had received in the accident in Manila and complicated by the conditions under which she had attempted to recuperate.

The Department of the Army believes that Miss Dwyer should be compensated in a reasonable amount for the injuries sustained by her, the pain and suffering undergone, and the expenses incurred by her, and has recommended an award in the amount of this bill composed of the following items:

Compensation for 42 days annual leave used by reason of Miss Dwyer's injury in this accident as computed by the Department-----	\$527. 52
Compensation for personal property lost or damaged-----	100. 00
Reimbursement of hospital expenses incurred in the Tenth General Hospital (presumably subsistence)-----	24. 00
Reimbursement for living expenses incurred in San Francisco, Calif., while detained for medical examination and for treatment as an out-patient at the Letterman General Hospital-----	115. 00
Surgical and hospital fees incurred for services performed by civilian surgeons and hospitals in May 1950-----	550. 00
Compensation for personal injuries and physical and mental suffering--	5, 000. 00
Total-----	6, 316. 52

Attached hereto and made a part of this report is the letter of the Department of the Army dated May 1, 1951.

DEPARTMENT OF THE ARMY,
Washington 25, D. C., May 1, 1951.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR SENATOR MCCARRAN: The Department of the Army would have no objection to the enactment of S. 29, Eighty-second Congress, a bill for the relief of Teresa E. Dwyer, if it should be amended as hereinafter recommended.

This bill would authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Teresa E. Dwyer, of Las Vegas, Nev., the sum of \$15,072, in full satisfaction of her claim against the United States for compensation for personal injuries, loss of personal property, hospital and medical expenses, and loss of salary, sustained by her as a result of an accident which occurred on December 18, 1946, in Manila, Philippine Islands,

while she was an authorized passenger in an Air Force jeep being driven on official business, by an Air Force civilian employee.

In August 1946 Miss Teresa E. Dwyer, a permanent civil-service employee having more than 10 years of continuous service with the Government, accepted a position as clerk-stenographer CAF-3 for service in Okinawa. Although she then had a rating of grade 7 with the Reconstruction Finance Corporation it appears that she was compelled to take a reduction to CAF-3 to obtain the assignment in question. Miss Dwyer states that upon arrival at Manila she and others scheduled to go to Okinawa were informed by representatives of the civilian personnel office of the Pacific Air Service Command Headquarters that they were to be assigned at that installation. She further states that after a month in the Pacific Air Service Command Headquarters she found it would be necessary for her to have additional cotton clothing because of the climate in the Philippines, and, therefore, on December 18, 1946, she was authorized by the field civilian personnel officer to ride into Manila in an Army jeep dispatched on official business. On the way to downtown Manila, the operator of the jeep, a civilian employee of the Army, disregarded a stop sign at the intersection of Concepcion Street and P. Burgos Avenue, as a result of which the jeep collided with an Army weapons carrier. It appears that Miss Dwyer was thrown head-first out of the jeep over the left shoulder of the driver and into the side of the weapons carrier, sustaining serious personal injuries. She was taken from the scene of the crash in a privately owned Philippine vehicle to the Philippine General Hospital for first-aid treatment and was then transferred by ambulance to the Tenth General Hospital at Fort McKinley, Philippine Islands, where she was hospitalized as a bed patient for 19 days. On January 17, 1947, the following medical certificate was issued by Maj. Robert L. Lenhart, MAC, and First Lt. Virgil R. May, MC, Tenth General Hospital:

"1. Dwyer, Teresa, civilian, was admitted to this hospital on December 18, 1946. Diagnosis at time of admission: 1. F. S. C. (fracture, simple, comminuted) nondisplaced scapula, right, accidentally incurred when jeep in which she was a passenger collided with a truck on Dewey Boulevard 1500 hours (3 p. m.), December 18, 1946. 2. Wound, abrasion, slight, elbow, left. 3. Wound, contusion, chest, left, interior. 4. Concussion, mild. 2, 3, 4 incurred same as in 1.

"2. * * *

"(e). In my opinion will be no permanent disability from the injuries."

Miss Dwyer states that, in addition to the injuries set forth in the above-quoted certificate, she sustained a severe shock, a badly sprained neck, a back or spinal injury, and numerous head, body, and leg bruises, abrasions, and lacerations. She further states that her left leg was so badly bruised from the knee to the ankle and the right leg from the knee to the hip that it was many weeks before the soreness and discoloration left. After 19 days in the Tenth General Hospital Miss Dwyer was released as a bed patient and instructed to return for heat treatments and observation, which instructions were followed by her.

On January 20, 1947, the Pacific Air Service Command Headquarters, to which Miss Dwyer was attached, was transferred to Fuchu, Japan, and Miss Dwyer was transferred as secretary to the Adjutant General, who, it appears, was familiar with Miss Dwyer's injuries and told her that he could use her services in several capacities until such time as she had the use of her right arm and had fully recovered. It seems that after her arrival in Japan, Miss Dwyer was billeted in an inadequately heated concrete building, as a result of which she contracted a severe cold. She reported to the dispensary, and it was recommended that she take daily diathermy treatments at the Three Hundred and Seventy-sixth Station Hospital at Tachikawa, 11 miles from her quarters, which she did. To do this, however, it was necessary for her to ride the 11 miles each morning to the hospital in an unheated ambulance, and then return in the same unheated vehicle to her insufficiently heated office. Finally, after an unsuccessful attempt to obtain a transfer to Okinawa where, she was informed, comfortable living quarters were available, and as her physical condition did not improve, Miss Dwyer was returned to the United States. Where she reported to the civilian personnel officer at Fort Mason, Calif. Thereafter she was sent to the Letterman General Hospital in San Francisco, where she was treated for 10 days as an out-patient. On June 22, 1947, at the expiration of her accumulated leave, her services were terminated.

Miss Dwyer is asserting a claim against the United States in the aggregate amount of \$15,072, consisting of the following items, the correct total of which, however, appears to be \$13,772:

Compensation for 8 months of employment to which she alleges she was entitled under her "contract" at an annual salary of \$3,274.65 per annum.....	\$2, 183. 00
Compensation for unnatural use of accumulated annual and sick leave amounting to approximately 42 days and 21 days, respectively.....	800. 00
Compensation for personal property lost or damaged at the time of accident.....	100. 00
Reimbursement of hospital expenses (presumably for subsistence) paid to Tenth General Hospital.....	24. 00
Reimbursement for living expenses incurred in San Francisco while detained for medical examination and treatment as an out-patient at Letterman General Hospital.....	115. 00
Surgical and hospital fees for services performed in May 1950 by private surgeons and hospitals:	
Rose De Lima Hospital, Henderson, Nev.....	\$163. 45
Southern Nevada Medical Group.....	341. 00
Dr. Joseph M. George.....	9. 00
Dr. Frazen.....	15. 00
Miscellaneous drugs.....	21. 55
	550. 00
Compensation for physical suffering and mental anguish and violations of rights and liberties as an American citizen serving the Government in a foreign land.....	7, 500. 00
Compensation for humiliations experienced.....	2, 500. 00
Total.....	13, 772. 00

On October 26, 1950, Dr. R. W. Hemington, Southern Nevada Medical Group, Las Vegas, Nev., submitted the following statement concerning an operation performed on Miss Dwyer in May 1950 and the conditions that necessitated such operation:

"Miss Teresa Dwyer was first seen in my office on May 8, 1950 at which time she was complaining of upper abdominal pain with sharp pains radiating to the right side of the lower abdomen. This was the third similar attack, the first one having occurred about March 1, 1950.

"History reveals that she had been in an auto accident about 3 years prior to present illness and had injured her back and fractured a shoulder. She said that she had not been in good health since that time. Since the auto accident she had suffered from moderate constipation, marked premenstrual tension state and slight chronic low abdominal distress.

"Physical examination was essentially normal except for tenderness in the epigastrium and right lower quadrant of the abdomen. White blood count was 12,450. Provisional diagnosis of acute appendicitis was made and laparotomy was performed May 8, 1950. Operative findings were as follows: (1) acute appendicitis; (2) hemorrhagic cyst destroying right ovary; (3) hemorrhagic cyst involving left ovary; (4) adhesions from ascending colon to anterior abdominal wall; (5) adhesions between transverse colon, jejunum, and anterior abdominal wall.

"The appendix was removed, right oophorectomy and left cystectomy, and lyses of adhesions. Post-operative course has been rather unsatisfactory due to continued abdominal pain, headache and weakness.

"The only explanation for the adhesions found at operation is of course long standing inflammation reaction in the involved areas. It is my opinion this may have begun when Miss Dwyer was in the auto accident in 1947 as there is no history of any other precipitating factor."

Miss Dwyer was 35 years of age at the time of this accident, and was unmarried. She assisted in supporting her mother, 75 years of age.

It is clear that this accident and the resulting personal injuries sustained by Miss Teresa Dwyer were not caused by any fault or negligence on her part but were caused by the negligence of the driver of the Army vehicle in which she was riding as an authorized passenger in disregarding a stop sign and proceeding into an intersection while traffic was lawfully moving through the intersection directly across his path. The Department of the Army, therefore, believes that Miss Dwyer should be compensated in a reasonable amount for the injuries sustained by her, the pain and suffering undergone, and the expenses incurred.

The proposed award of \$15,072 appears to be somewhat excessive. There are several items of the claim which appear to be without legal basis. Claim is

made in the amount of \$2,183 for compensation "for 8 months of unexpired contract based on an annual salary of \$3,274.65."

Miss Dwyer had no contract with the United States governing her employment. Before she left for her overseas assignment Miss Dwyer signed a paper entitled "Standard Conditions of Employment for United States Continental Citizens." This form does not purport to be a contract but is merely a specification of certain of the rights, privileges, and obligations of the employee. It states, among other things, that the employee is required to remain in service at least 1 year from the time of arrival at permanent duty station, unless separated sooner for reasons acceptable to the Government not involving misconduct. Miss Dwyer was separated from her employment effective June 22, 1947, "for the convenience of the Government (medical reasons)." Claim is made for \$800 for "unnatural use of accumulated annual and sick leave." Sick leave is properly used for the purpose for which it was used in this case, and no payment should be made therefor. It appears, however, that the claim for compensation for the 42 days annual leave Miss Dwyer was compelled to use as a result of her injury in this accident is a valid one and that she is entitled to payment for such leave. The \$7,500 claimed for physical suffering and mental anguish endured seems somewhat excessive. It is believed that an award of \$5,000 for personal injury as such, including physical and mental suffering, would be fair and reasonable. The compensation in the amount of \$2,500 for "humiliations experienced, and violation of rights and liberties as an American citizen serving the Government in a foreign land," insofar as this item can be supported, is included in the item "Physical suffering and mental anguish." The Department would have no objection to the enactment of the bill if it should be amended to provide for an award in the total amount of \$6,316.52, which, it is believed, would constitute a fair and reasonable settlement for all of the damages sustained by Miss Dwyer as a result of this accident. The amount of \$6,316.52 is made up of the following items:

Compensation for 42 days annual leave used by reason of Miss Dwyer's injury in this accident as computed by the Department.....	\$527. 52
Compensation for personal property lost or damaged.....	100. 00
Reimbursement of hospital expenses incurred in the Tenth General Hospital (presumably subsistence).....	24. 00
Reimbursement for living expenses incurred in San Francisco, Calif., while detained for medical examination and for treatment as an outpatient at the Letterman General Hospital.....	115. 00
Surgical and hospital fees incurred for services performed by civilian surgeons and hospitals in May 1950.....	550. 00
Compensation for personal injuries and physical and mental suffering..	5, 000. 00
Total.....	6, 316. 52

This claimant has no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as amended and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), as amended, for the reason that the accident out of which the claim arose occurred in a foreign country. There is no other statute available to the Department of the Army under which the claim can be paid administratively. It does not appear that any claim was filed by Miss Dwyer for compensation for her injuries under the United States Employees' Compensation Act, as amended (39 Stat. 742; 5 U. S. C. 751 et seq.). She states that "I questioned Miss Stone (Mildred Stone, administrative assistant to chief of Miss Dwyer's division) regarding unemployment compensation under the Employees' Compensation Act and was advised that it would be useless to file such a claim as my injury was not sustained while actually at work."

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, JR.,
Secretary of the Army.



